IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

**WRIT PETITION NO. 4412 OF 2004**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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CORAM : B.P. DHARMADHIKARI, J.
JANUARY 25, 2007.

Heard Shri Ghare, learned counsel for the petitioner – plaintiff. Nobody appears for the respondent – defendant.

The notice has been served upon the respondent – defendant prior to 13.1.2005 and as there was no appearance, on 13.9.2006 this Court issued fresh notice pointing out that writ petition may be disposed of finally at the stage of admission itself. Fresh notice is also served upon the respondent prior to 3.11.2006. There is no appearance. The matter was listed before this Court on 16.1.2007 and was adjourned to enable the respondent to appear and contest.

The petitioner has filed a suit for recovery of certain amount against respondent and after leading his evidence and examining one witness Narhari, it was noticed that certain

bills were not exhibited inadvertently. Hence, the application was moved for that purpose and that application was rejected on 10.3.2004 on the ground that full opportunity was given to the plaintiff to lead his evidence and it amounted to filling of lacuna. The petitioner thereafter moved another application to examine witness Narhari as court witness. That also has been rejected on 11.8.2004.

The documents were already on record when plaintiff or his witness entered the witness box. The suit is for recovery of amount and the documents are bills. In these circumstances, it is apparent that plaintiff cannot be blamed for not exhibiting those documents. In the circumstances, Court below could have permitted the petitioner to examine said witness Narhari further more particularly when the recording of evidence of defendant had not commenced. On 28.9.2004, this Court has granted ad interim relief which operates even till today. In the circumstances, in order to give petitioner - plaintiff a fair chance, I am inclined to permit the petitioner to recall said witness Narhari for the purposes of exhibiting only those bills so that present

respondent – defendant will also get an opportunity to cross examine him in the matter.

The impugned orders dated 11.8.2004 and 10.3.2004 in Regular Civil Suit No. 133 of 2001 are accordingly quashed and set aside. The application made by the petitioner – plaintiff at Exh. 33 is allowed. Witness Narhari is allowed to be recalled only for the purposes of proving the bills in question. Writ Petition is disposed of accordingly. No order as to costs.

**JUDGE**

*GS.